No. 86-1270

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1986

J. VINCENT APRILE, II and
WILLIAM M. RADIGAN - - - Petitioners

versus

COMMONWEALTH OF KENTUCKY - Respondent

Petition for Certiorari to the Supreme Court of Kentucky

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of Kentucky may, consistent with due process, find an appointed public advocate attorney and his co-counsel, handling a mandatory death penalty appeal, guilty of criminal contempt and impose fines on a vote of 4-3 without making specific findings of fact and conclusions of law or specifying the elements of the offense and the standard of proof applied.

Petitioners contend that the Court should issue this writ to answer this question in the negative.

II. LIST OF ALL PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF KENTUCKY

In the Supreme Court of Kentucky, this action was styled *Brian Keith Moore* v. *Commonwealth of Kentucky,* No. 85-SC-101-I. Aprile and Radigan, Petitioners herein, were attorneys representing Appellant Moore in the appeal of his death sentence.

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SUPREME COURT OF THE UNITED STATES

No. _____

October Term, 1986

J. VINCENT APRILE, II and
WILLIAM M. RADIGAN - - - - *Petitioners*

v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

PETITION FOR WRIT OF CERTIORARI

V. OPINIONS BELOW

The opinion of the Supreme Court of Kentucky is printed in Petitioners' Appendix A at Pages 1a-5a and has not been officially published. The order denying the motion to vacate is printed in Petitioner's Appendix B at Page 6a. The order denying the motion to reconsider is printed in Petitioner's Appendix C at Page 7a.

VI. JURISDICTION

The date of entry of the judgment sought to be reviewed is November 26, 1986. This Court has jurisdiction to hear the case under the provisions of 28 U.S.C. § 1254(1).

VII. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

This case involves the following constitutional provisions, statutes and court rules which are set out verbatim:

Fourteenth Amendment to the Constitution of the United States § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Kentucky Rules of Civil Procedure, Rule 52.01:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment; and in granting or refusing temporary injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review except as provided in Rule 52.04. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

> The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02.

Kentucky Rules of Criminal Procedure, Rule 9.26 (2):

> In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear in it.

VIII. STATEMENT OF THE CASE

This case arises from J. Vincent Aprile and William M. Radigan's representation of Brian Keith Moore in the appeal of Moore's conviction of murder, kidnapping and robbery charges. For the murder offense, Moore was sentenced to death. Under Kentucky law, death sentences are subject to mandatory review (Kentucky Revised Statutes, Chapter 532). Timely notice of appeal was filed on December 6, 1984. Aprile, General Counsel for the Kentucky Department of Public Advocacy, was the attorney in charge of Moore's appeal. Radigan, an attorney in private practice, volunteered his services as Aprile's co-counsel.

Pursuant to an order of the Supreme Court of Kentucky July 11, 1985, Moore's brief was scheduled to be filed on or before August 12, 1985. On August 12, 1985, Moore, through counsel, filed a motion requesting an extension of time to and including June 12, 1986 in which to perfect the appeal and file his brief. By order entered on August 30, 1985, the Supreme Court of Kentucky granted Moore's extension. The court provided that if Moore's brief was not filed and his appeal perfected before June 12, 1986, Aprile and Radigan "shall appear before this Court on June 24, 1986, . . . in order to show cause why they should not be held in contempt of this Court or sanctioned, for failure to timely complete the brief" (Appendix A, pp. 1a-5a).

On June 10, 1986, Moore, through counsel, filed a second motion requesting an additional six months to perfect the appeal and file his brief. Aprile and Radigan noted the length and complexity of the case, noting specifically that forty issues were presented in the motion for new trial. Additionally, Aprile explained that his time had been limited by unanticipated appointments to other criminal cases. By order entered June 25, 1986, the Supreme Court of Kentucky granted an extension of only three months to and including September 12, 1986.

On September 10, 1986, Petitioners filed a motion requesting an additional three months in which to perfect the appeal and file the brief on behalf of Moore. This motion requested the same amount of time orig-

inally requested in the June 10 motion. Petitioners cited the voluminous record in the case — the total transcript consists of thirty-six volumes comprising 4,781 pages — as one reason why they were unable to complete the brief within the time allotted. Further, Petitioners noted, the case involves over sixty issues to be presented for review in the appellate court. Aprile additionally cited his massive case load as a public advocate attorney.

By opinion and order entered September 25, 1986, the Supreme Court of Kentucky found Aprile and Radigan guilty of criminal contempt of court for failure to show why the brief was not timely filed pursuant to the Court's earlier order. This order was issued on a 4-3 finding of contempt by the Supreme Court of Kentucky. Chief Justice Stephens and Justices Leibson, Stephenson and Wintersheimer concurred in the finding of contempt. Justice Vance stated that he would impose sanctions, but without a finding of contempt. Justices Gant and White dissented (Appendix A, pp. 1a-5a).

On October 2, 1986, Petitioners filed a motion to vacate the court's opinion and order because one of the justices voting on the contempt charge had testified during the guilt-innocence phase of Moore's death penalty trial. The Supreme Court of Kentucky denied Petitioners' motion to vacate on November 6, 1986 (Appendix B, p. 6a).

On October 3, 1986, Petitioners filed a motion for reconsideration, asking the Supreme Court of Kentucky to reconsider its opinion and order because there was no adequate basis to sustain the convictions of criminal contempt. Petitioners argued that the order was fundamentally unfair and violative of due process because it failed to specify the elements of the offense, failed to make specific findings of facts and conclusions of law, and failed to specify the standard of proof. Further, Petitioners argued that the 4-3 finding of contempt did not satisfy the constitutional requirement of finding guilt beyond a reasonable doubt. The Supreme Court of Kentucky denied Petitioners' motion to reconsider on November 26, 1986 (Appendix C, p. 7a).

IX. ARGUMENT

In the case here presented, special circumstances exist which constitute important reasons for review on a writ of certiorari. Among those circumstances are the following:

I. The decision of the Supreme Court of Kentucky finding these attorneys in criminal contempt conflicts with the applicable decisions of this Court as enunciated in *Brown* v. *Louisiana*, 447 U. S. 323 (1980) and other cases.

II. This case presents constitutional questions of importance left open by *Evitts* v. *Lucey*, 469 U. S. 387 (1985).

The Supreme Court of Kentucky found Aprile, a public advocate attorney, and his volunteer co-counsel

guilty of criminal contempt and imposed fines for their failure to adequately show cause why their brief could not be filed within the time allotted by the court. Assuming that the proper standard of proof—beyond a reasonable doubt—was applied, a vote of 4-3 simply does not reflect the careful consideration necessary for a finding of criminal contempt.

Petitioners contend that the standard of proof beyond a reasonable doubt is not satisfied in this case because only four of the seven justices found that they were guilty of contempt. Justices Stephens, Leibson, Stephenson and Wintersheimer found that Petitioners were guilty of criminal contempt. Justice Vance believed that sanctions were warranted, but would not find the attorneys in contempt. Justices Gant and White dissented. The role of the Kentucky Supreme Court in this case is analogous to that of a jury acting as initial fact-finder in a criminal trial. It is true that unanimous verdicts are not constitutionally required in all state criminal trials. A 4-3 verdict, however, does not satisfy the requirement of a finding of guilt beyond a reasonable doubt.

In *Apodaca* v. *Oregon,* 406 U. S. 404 (1972) and *Johnson* v. *Louisiana,* 406 U. S. 356 (1972), this Court held that jury verdicts of 11-1, 10-2 and 9-3 were not automatically invalidated. In his *Johnson* concurrence, however, Justice Blackmun expressed the view that verdicts of less than a substantial majority might not withstand attack. Justice Blackmun stated: "I do not hesitate to say, either, that a system employing a

7-5 standard, rather than a 9-3 or a 75% minimum, would afford me great difficulty." *Johnson* v. *Louisiana,* 406 U. S. at 366. In *Burch* v. *Louisiana,* 441 U. S. 130 (1979), the Court joined in Justice Blackmun's concern about less than unanimous verdicts involving smaller numbers of jurors. In *Burch,* the Court held that conviction by a nonunanimous six-person jury in a state criminal trial violates the accused's right to trial by jury as guaranteed by the sixth and fourteenth amendments.

In *Brown* v. *Louisiana,* 447 U. S. 323 (1980), this Court cataloged the reasons for its earlier holdings on this issue. Several of the considerations cited apply in this case. First, "a decline in jury size leads to less accurate fact finding and a greater risk of convicting an innocent person." *Brown,* 447 U. S. at 333. Further, a reduction in the size of the jury panel in criminal cases unfairly disadvantages one side—the defendant." *Id.*

"[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson* v. *Virginia,* 443 U. S. 307, 319 (1979). The bare majority vote of 4-3 by an appellate court serving as initial fact-finder on the question of an attorney's guilt on a contempt charge demonstrates a constitutional deficiency.

Criminal contempt is defined by Kentucky law as an act in disrespect of the court or its process which obstructs the administration of justice. *Casteel* v.

Sparks, 312 Ky. 99, 226 S. W. 2d 533 (1950). The standard applied in determining whether an attorney is in contempt is whether he is in reckless or willful disregard of a court order. *United States* v. *Delahanty,* 488 F. 2d 396 (6th Cir. 1973). The facts of this case do not suggest that these advocates were in reckless or willful disregard of the court's earlier order. The Supreme Court of Kentucky may properly be upset with the delays which took place in this case, but contempt of court is not the appropriate way to deal with these problems. A court should take great care before imposing that method of discipline, *Miller* v. *Stephenson,* 474 S. W. 2d 372 (Ky. 1971), in part because the impact upon the professional standing of a lawyer created by a citation for contempt of court is not limited to the monetary amount of the fine imposed.

The elements of the crime of contempt are not set forth in the court's opinion and order. Nor were Aprile and Radigan apprised before the time that they were found guilty of contempt what actions on their part would subject them to charges of contempt. Petitioners contend that their due process rights were violated because they were given no standards by which to attempt to conform their conduct. The court's earlier order granting their extension provided that if Aprile and Radigan did not file the brief and perfect the appeal within a certain time, they were to appear before the court "in order to show cause why they should not be held in contempt . . . or sanctioned, for failure to timely complete the brief." This lan-

guage represents the only guidance Petitioners were given with respect to the type of behavior which would lead to contempt charges.

Petitioners contend that the vagueness of this order, giving no standards by which to attempt to conform their conduct, violated their due process rights. Laws are frequently struck down for being overly vague:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibition is not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.

Grayned v. *Rockford,* 408 U. S. 104, 108 (1972). *See also United States* v. *Harriss,* 347 U. S. 612 (1954). The rules as to vagueness also apply to orders of court. *McCreery* v. *Libby-Owens-Ford Glass Co.,* 363 Ill. 321, 2 N. E. 2d 290 (1936). Petitioners were given no indication what would constitute cause sufficient to prevent their being held in contempt if they were unable to file the brief in the time provided. This lack of standards violated the attorneys' due process rights.

The court's opinion and order includes no specific findings of fact or conclusions of law. This is a violation of the court's own rules and goes against the weight of authority holding that findings of fact and conclusions of law are essential in criminal contempt

cases. It was violative of Petitioners' due process rights for the Supreme Court of Kentucky to fail to specifically identify those acts which constituted criminally contemptuous conduct.

The Kentucky Rules of Civil Procedure require that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon. . . ." CR 52.01. This rule is mandatory and failure of a trial court to honor it may constitute reversible error. *Perry* v. *McLemore,* 414 S. W. 2d 141 (Ky. 1967); *Fleming* v. *Rife,* 328 S. W. 2d 151 (Ky. 1959); *Schaaf* v. *Brown,* 304 Ky. 466, 200 S. W. 2d 909 (1947). The Kentucky Rules of Criminal Procedure contain a similar provision. *See* RCr 9.26(2). The opinion and order in this case contains no such specific findings of facts. The failure of the Supreme Court of Kentucky to follow its own rules is fundamentally unfair and constitutes a due process violation.

Although the issue has not been specifically addressed in Kentucky, there is considerable authority in other jurisdictions that specific findings of fact are essential to support a judgment for contempt. *See, e.g., Fienup* v. *Rentto,* 4 S. D. 329, 52 N. W. 2d 486, 489 (1952) ("A disregard of this rule is not a mere irregularity in practice. It is a vital defect; the Court has no right to adjudge a party in contempt without making findings of facts showing as a matter of law, a basis for the judgment."); *Hildebrand* v. *Hildebrand,* 32 Wash. 2d 311, 201 P. 2d 213, 215 (1949) ("[F]indings of fact

must be made by the trial Court in either civil or criminal contempt cases.").

Furthermore, the Supreme Court of Kentucky did not identify the standard of proof applied in this case—whether the standard applied was beyond a reasonable doubt or clear and convincing or some other standard, is not made clear. The applicable standard of proof in criminal contempt cases is beyond a reasonable doubt. As this Court stated, "[w]ithout deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved guilty beyond a reasonable doubt, and cannot be compelled to testify against himself." *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418 (1911). *See also Michaelson* v. *United States,* 266 U. S. 42 (1924); *Blackard* v. *State,* 217 Ark. 661, 232 S. W. 2d 977 (1950); *Brannon* v. *Commonwealth,* 162 Ky. 350, 172 S. W. 703 (1915).

Petitioner Aprile is a dedicated, experienced and effective public advocate. The records of this Court demonstrate that he has argued cases before this Court on four occasions, most recently on October 14, 1986. As a public advocate, he does not have the luxury of declining cases. The record before the Kentucky Supreme Court does not demonstrate any indication of laziness, procrastination or sloth on his part. Indeed, Petitioner Aprile works overtime hours for which he is not paid by reason of the budget restrictions. Petitioner Radigan is an attorney in private practice who volunteers his time in criminal appeals such as this one. He is not paid for his time in these cases.

In *Evitts* v. *Lucey,* 469 U. S. 387 (1985), this Court held that because due process guarantees that a criminal defendant receive effective assistance of counsel on his first appeal as of right, a mandatory appeal cannot be dismissed because counsel disobeys court rules. Justice Brennan suggested that "[t]o the extent that a state believes its procedural rules are in jeopardy, numerous courses remain open. For example, a State may certainly enforce a vital procedural rule by imposing sanctions against the attorney, rather than against the client." *Id.* at ——, 105 S. Ct. at 837. If, however, because of the fear of criminal contempt charges, counsel are forced to file briefs without adequate time to properly prepare them, a chilling effect upon the quality of legal representation may occur. Such a result is surely not what was intended by Justice Brennan's comment.

The real source of the problem is the burden of overload upon the public advocates and those, like Radigan, who volunteer their time and energy to indigents' cases. During the period of time involved in this case, Petitioner Aprile and another public advocate were under three additional show cause orders from the Supreme Court of Kentucky. Aprile and his co-worker were each able to comply with one order, but Aprile did not manage to comply in a third case. If sanctions are necessary, some method other than contempt of court should be adopted to draw the attention of practioners generally to the problems of extended delays in filing appellate briefs and in waiting until the last minute to

make motions for extensions of time. Petitioners, however, believe that due process requires that they be given prior notice that last minute motions will be considered contemptuous.

X. CONCLUSION

There is insufficient weight in a 4-3 decision to support a finding of guilt beyond a reasonable doubt. Further, it is fundamentally unfair and violative of due process to be subject to an order which does not specify the elements of the offense and the standard of proof applied or make specific findings of fact and conclusions of law. It is appropriate, therefore, that this petition for certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF KENTUCKY

85-SC-101-I

BRIAN KEITH MOORE - - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Jefferson Circuit Court
Honorable Edmund P. Karem, Judge
79-CR-0976

OPINION AND ORDER

On August 30, 1985, this Court entered an order in the above-styled action granting appellant's motion for an extension of time to June 12, 1986, in which to file his brief and perfect the appeal.

In the same Order we further provided:

> "If appellant's brief is not filed and his appeal is not perfected on or before June 12, 1986, appellant's counsel, Honorable J. Vincent Aprile, II, and Honorable William M. Radigan, shall appear before this Court on June 24, 1986, at 11:30 a.m., in order to show cause why they should not be held in contempt of this Court or sanctioned, for failure to timely complete the brief."

Appellant's counsel, J. Vincent Aprile, II, of the Department of Public Advocacy and William M. Radigan failed to comply with this Court's Order and a hearing was

held on June 24, 1986, at which time Mr. Aprile and Mr. Radigan appeared and testified.

We find the following facts to be true: The transcript of evidence was filed on July 10, 1985. Thereafter, *on the day the brief was due* appellant's counsel failed to file his brief but instead filed a motion for a ten (10) month extension. The reasons for the requested lengthy extension included a recitation of the length of the record on appeal and counsel Aprile's present caseload; along with counsels' estimate, after reviewing the record and based on their present caseloads and past experience with appeals of comparable nature and size, that an additional ten (10) months would be needed to prepare appellant's brief. In paragraph seven of the motion for extension counsel stated that "[b]ecause this is a capital case in which the death sentence was imposed, the undersigned counsel believed this initial extension of ten (10) months is both reasonable and necessary under the circumstances." On August 30, 1985, this Court considered and granted appellant's requested motion for extension of time and entered the aforementioned Order.

Ten months later, *one day prior to the date the brief was due,* appellant's counsel failed to file his brief but instead fined a motion requestisg a six (6) month extension of time. Counsel failed to comply with this Court's Order of August 30, 1985, to timely file appellant's brief and instead filed a second motion for extension of time which in large part recited the language of the previous motion for extension of time and listed "the length of the appellate record at bar, the number of preserved errors to be evaluated, and the imposition of the sentence of death" as reasons justifying counsel's request for an additional extension of time.

At the oral hearing conducted June 24, 1986, Mr. Radigan advised this Court that although he and Mr. Aprile

had served as appellant's trial counsel, neither he nor Mr. Aprile had completed reading the record in this case, nor begun writing appellant's brief. After eleven months and in spite of a pending show cause order, neither attorney had begun writing appellant's brief or had completed reading the record in the case. In a criminal case of this nature this Court will not dismiss an appeal for counsel's failure to timely file a statement of appeal and brief, but this Court cannot relinquish its authority by allowing counsel to decide when it is timely and appropriate for a brief to be filed, rather than following the orders of this Court.

Mr. Radigan and Mr. Aprile gave no adequate response to the Order of this Court to show cause. Both Mr. Radigan and Mr. Aprile served as trial counsel for appellant, however, after eleven months neither counsel has committed any portion of the appellant's brief to writing or read the record in its entirety. As appellant's trial counsel, both attorneys are thoroughly familiar with the record in this case and the issues of merit therein, and yet in the eleven months since the record was certified neither attorney has begun to work on the appeal, in clear violation of this Court's Order of August 30, 1985. While Mr. Aprile testified that his caseload as a public advocate prevented him from giving full attention to appellant's case, Mr. Radigan as a private attorney offered no excuse for his failure to begin work on appellant's brief. Upon accepting the responsibility of this appeal, Mr. Radigan agreed to devote the necessary time and energy to this case and as a private attorney who is able to control his caseload, he could not offer adequate reason for non-compliance with this Court's Order. Although counsel were fully aware that they would be unable to comply with this Court's Order of August 30, 1985 and timely file appellant's brief, they waited until the last day of the ten-month extension period

to request another extension. Counsel were granted a realistic deadline for filing appellant's brief. We cannot condone the practice prevalent in criminal cases of routinely seeking an additional extension of time on the last day of the extension period rather than filing the brief. When counsel is granted a lenthy extension of time in which to file a brief and it becomes impossible for counsel to file that brief, counsel shall inform this Court and request an additional extension at the earliest practicable date, justifying their inability to file the brief and the necessity for an additional extension of time to complete the brief.

We find no acceptable excuse for counsels' failure to begin writing appellant's brief or even complete reading the record on appeal before the date the brief was ordered to be filed. We further find that Mr. Aprile and Mr. Radigan are in contempt of the Order of this Court entered August 30, 1985, requiring them to file appellant's brief on or before June 12, 1986, or appear to show cause why they should not be held in contempt of this Court or sanctioned for failure to timely complete the brief. We find Mr. Aprile's explanations as to caseload to be inadequate to explain his lack of effort to commit any portion of appellant's brief to writing or to read the record. We find Mr. Radigan's explanations to be even more inadequate as he is in private practice and is able to control his caseload so that he may honor his responsibilities. We find no explanation for counsel's failure to notify this Court immediately if legitimate considerations prevented their compliance with our Order of August 30, 1985, when notified thereof.

Being duly advised, it is the order of this Court that said J. Vincent Aprile, II, is found in contempt of court and fined $500 for his contempt. It is further the order of this

Court that said William Radigan is found in contempt of court and fined $500 for his contempt.

In consideration of this being the first conviction for Mr. Aprile, payment of his fine is suspended subject to further conduct. Mr. Aprile appeared before this Court on June 24, 1986 (the same day as the hearing in this case) to show cause why he should not be held in contempt or sanctioned for failing to file appellant's brief in Parramore Sanborn v. Commonwealth, but technically his appearances before this Court on June 24, 1986 in these two cases constitute his first convictions for contempt of Court.

On December 22, 1983, this Court entered an Opinion and Order styled In Re Radigan, Ky., 660 S. W. 2d 673 (1983) adjudging William Radigan to be in contempt of this Court and fining Mr. Radigan $100.00 for his failure to timely file the brief for appellant, Joseph Herald, and for his failure to timely notify this Court of his alleged inability to comply with court ordered briefing. As this present conviction is Mr. Radigan's second conviction for contempt of this Court, his $500 fine is payable to the Clerk of the Supreme Court.

Costs of this proceeding are assessed against Mr. Radigan and Mr. Aprile.

Stephens, C.J., Leibson, Stephenson, and Wintersheimer, J.J., concur. Vance, J., would impose the fine and costs as sanctions for failure to comply with a court order without a finding of contempt. Gant and White, J.J., dissent.

ENTERED September 25, 1986.

/s/ Robert F. Stephens
Chief Justice

APPENDIX B

SUPREME COURT OF KENTUCKY

85-SC-101-I

BRIAN KEITH MOORE - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Jefferson Circuit Court
79-CR-0976
Honorable Edmund P. Karem, Judge

ORDER

The motion of appellant, Brian Keith Moore, by and with counsel to vacate this Court's Opinion and Order of September 25, 1986, is denied.

Stephens, C.J., and Gant, Stephenson, Vance, White and Wintersheimer, J.J., sitting. All concur, Leibson, J., not sitting.

ENTERED: November 6, 1986.

(s) Robert F. Stephens
Chief Justice

APPENDIX C

SUPREME COURT OF KENTUCKY

85-SC-101-I

BRIAN KEITH MOORE - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Jefferson Circuit Court
No. 79-CR-0976
Honorable Edmund P. Karem, Judge

ORDER DENYING MOTIONS TO RECONSIDER OPINION AND ORDER HOLDING WILLIAM M. RADIGAN AND J. VINCENT APRILE IN CONTEMPT

The motions to reconsider opinion and order entered September 25, 1986, holding William M. Radigan and J. Vincent Aprile in contempt are denied.

Stephens, C.J., and Gant, Stephenson, and Wintersheimer, J.J., concur.

Leibson, J., not sitting.

ENTERED November 26, 1986.

/s/ Robert F. Stephens
Chief Justice